

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 13-20 are requested to be withdrawn.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-12 and 21-23 (15 claims) are now pending in this application.

On page 2, paragraphs 1 and 2, Applicants acknowledge the restriction requirements and that Applicants elected invention I covering claims 1-12 and 21-23 for prosecution and have withdrawn claims 13-20. Applicants reserve the right to file a divisional application with respect to claims 13-20.

On page 2, paragraph 1, the Examiner has rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by Hamilton (USPN: 2,805,559). Hamilton discloses an air conditioning apparatus. (see title). Hamilton also teaches that “atmospheric air can be subjected to cooling by evaporation processes without impregnation by moisture”. (See col. 1, lines 23-24) Hamilton also discloses that his device includes a refrigerating coil 39 (see col. 3, lines 44-45). As best understood, Hamilton teaches that atmospheric air enters the device through conduits 19 and passes through tubes 21 and connects with conduit 20. Water is passed over this tubing but does not come in contact with the air being cooled.

In contrast, the present application discloses an evaporative cooler that passes atmospheric air through a moisture laden media (paragraph 0002). Further, none one of the embodiments that are claimed in the present application utilize or require a refrigeration coil as required by Hamilton. Accordingly, Hamilton does not anticipate that which is disclosed and claimed in the present application. Therefore, Applicants respectfully request that the Examiner withdraw his rejection of claim 1 under 35 U.S.C. § 102(b).

On page 3, paragraph 6 of the Office Action, the Examiner presumes that the subject matter of the various claims are commonly owned at the time of the invention. Applicants confirm that the subject matter of the various claims is commonly owned by the same assignee of record.

On pages 3-5, paragraphs 7-10 of the Office Action, the Examiner has rejected claims 2-12 and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over Hamilton combined with selected features of four other cited patents. In each of the numbered paragraphs of the Office Action, the Examiner combines Hamilton with features of the other patents to support his rejection of the several claims. In response, Applicants reiterate their comments with respect to Hamilton and submit that one ordinarily skilled in the art of evaporative coolers would not look to modify Hamilton which is for an air conditioning unit including a refrigeration apparatus to obtain that which is disclosed and claimed in the present application. As stated above, Hamilton requires refrigeration equipment as part of the cooling process which is not required or included in the subject matter of the present application. Applicants also point out that the patents cited by the Examiner for combining with Hamilton are understood to include refrigeration apparatus, see for example Cavender element (12) and Grandinetti elements (22, 25). The Examiner believes that Hamilton can be modified by adding the various features of the other cited patents. However, there is no teaching, suggestion or motivation in Hamilton to provide such features. Further, there is no suggestion, motivation or teaching in Hamilton to eliminate the refrigeration unit which is not required in the present application.

Applicants submit that the Examiner is relying on hindsight to make the above obviousness rejections of the cited claims under 35 U.S.C. § 103(a). Applicants believe that the Examiner is basing his rejection on the mere identification in the prior art of individual components of the claimed limitations in the present application. The Examiner has not made particular findings as to the reason a skilled artisan, with no knowledge of the claimed invention would have selected the components for a combination in the manner claimed in the present application. The reasons cited by the Examiner for his suggested combination is not identified in Hamilton or the other cited patents and in fact the suggested combination and modification to Hamilton would render the Hamilton invention unsatisfactory for its intended purpose and make the Hamilton device inoperative or ineffective. Hamilton relies on the refrigeration unit for the cooling of the air and also does not allow the water to contact the air moving through the conduits 21 during the cooling process. In contrast the present application discloses the movement of air through the water laden media. See M.P.E.P. § 2143.01. Applicants submit that the Examiner has not provided any motivation for combining the Hamilton and the other cited patent references. Specifically, the combination of the references have to be based on a teaching, modification or suggestion in the references to combine it. There is no such teaching in Hamilton or the other cited patents.

As stated above, the Applicants have pointed out the differences in structure, functionality or inoperabilities of the various elements cited by the Examiner in the prior art patents combined by the Examiner to make his obviousness rejections. The Examiner has not made any showing of the teaching or instruction to modify Hamilton to eliminate a refrigeration apparatus which is not required in the present application. Applicants submit that , as stated above, the claims as originally filed are patentably distinct from the prior art cited by the Examiner and that one ordinarily skilled in the art would not be compelled to combine the elements cited by the Examiner to obtain that which is disclosed and claimed in the present application.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 07-26-05

FOLEY & LARDNER LLP  
Customer Number: 26371  
Telephone: (414) 297-5776  
Facsimile: (414) 297-4900

By James A. Wilke

James A. Wilke  
Attorney for Applicants  
Registration No. 34,279